Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

PUBLIC OWNERSHIP OF MINERAL LANDS IN THE UNITED STATES.

MUCH as has been said in criticism of the public-land policy of the United States, there is, perhaps, no part of the whole system which reflects so little credit upon the government, and about which so little has been written, as the management and disposal of that portion of the public domain containing mineral deposits. Starting out with the European idea of retaining to the government a share in all minerals found in its domain, the United States began, as early as 1785,[1] to reserve lands containing minerals, for future disposal by Congress. No one seems to have had a very clear idea as to why they should be reserved, or how they were to be disposed of; but the plan of reserving them was followed for more than half a century, and it was not until 1847 that, together with the system of leases which grew out of it, the policy was finally abandoned. It is this experiment in national ownership and control of mineral lands with which this paper deals.

The two minerals to which public attention was chiefly attracted in the early years of the Republic, were salt and lead. By an act of May 18, 1796, providing for the sale of lands northwest of the Ohio, the Scioto salt spring, with enough contiguous land to make one township, and such other springs as might be discovered, were reserved for the future use and disposal of the United States. Soon after the purchase of Louisiana, similar reservations of the salines in that territory were made. Under these general acts and those of a specific nature, more than half a million acres of salt lands were at one time or another withheld from sale by the government.

Influenced, perhaps, by the example of New York which had

[1] "There shall be reserved lot No. 16, of every Township, for the maintenance of public schools within said Township; and one-third part of all gold, silver, lead and copper mines, to be sold or otherwise disposed of as Congress shall hereafter direct." —*Journals of Congress*, vol. x. p. 121.

recently begun leasing its salt lands, but more by the desire to protect them from depredation, Congress, in 1800, authorized the surveyor-general to lease the salines for periods not exceeding seven years, on such conditions as he should deem reasonable. Nothing seems to have been done under this law, however, and in 1803, it was enacted that "for the purpose of procuring articles necessary to the establishment of salt works at the springs near the Wabash River," the sum of $3000 be appropriated and the President be authorized to expend it in causing the springs "to be worked at the expense of the United States;" or, if he should deem it more desirable, the President could lease the springs for a term not exceeding three years "on such conditions as will insure the working the same most extensively and to the most advantage to the United States."

How this appropriation was expended does not appear. From a document submitted to Congress some years later, however, it seems that kettles for boiling down salt water were actually bought,[1] though no account of the direct working of the springs by government is to be found. In 1807 the power to lease began to be used, and during the next ten years about a dozen leases were recorded. The lessees were allowed to sublet parts of their springs, and in some places the government allowed them to use its "kettles." The leases were executed, sometimes by an agent appointed for the purpose, sometimes by a register of the land office, and again by the territorial governor.[2] The time was invariably for three years. The rent was in most instances payable in kind, being a fixed number of bushels of "good, dry, merchantable salt." In some cases, however, payment was made in money.

Payments on account of the salt springs ceased in 1818. At that time, the government had received $28,400; but the books of the collecting agents show the receipt of 158,000 bushels of salt, and at the price at which salt was then selling, at least as many dollars should have been realized. This apparent shortage

[1] *American State Papers, Public Lands*, vol. iii. p. 270.

[2] *Public Lands*, vol. iv. p. 527.

can be accounted for in part, at least, by an unwise provision in the leases. The government, to guard against monopoly prices, usually stipulated not only the minimum amount of salt to be produced, but the maximum price at which it could be sold.[1] The lessees, on the other hand, to protect themselves against the competition of the rent salt, secured an agreement that none of it should be sold for less than a given minimum unless a reduction were consented to by them. Such a reduction was sometimes consented to when the salt was sold to themselves; other amounts were disposed of to new lessees as a part of the terms required; but as the lessees were able to supply all the salt that was needed, at a price somewhat below the minimum, the government had to seek a distant market for its salt, or, as was frequently the case, had to keep its rental on hand till it was spoiled.[2]

The most important of the salines were in Illinois. Others were in Ohio, Indiana, Missouri, Arkansas, Mississippi and Michigan. But those in Arkansas, Mississippi and the further northwestern states were not developed till after the government had given over to the states the control of the saline lands. The manner of giving over that control is worth noting.

No doubt the chief motive which induced Congress to reserve the salines from sale was the fear that they might become a monopoly. This fear showed itself again in 1802 when Ohio was admitted into the Union. Among the grants made by the government on this occasion was that of all the saline lands which had been reserved from sale, but it was stipulated that the state should never sell the lands without the consent of Congress and never lease them for a longer period than ten years. On the admission of Indiana and Illinois they, too, were given the salines within their border, on terms identical with those of the Ohio grant. As the other states were admitted, they received only a specified number of springs, usually twelve, and always subject

[1] *History of Illinois from 1778 to 1833*, and *Life and Times of Ninian Edwards*, by N. W. EDWARDS, Springfield, 1870, pp. 529-543.

[2] *Public Lands*, vol. iii. pp. 273-4.

to the same restrictions as to sale and lease as in the earlier grants.

The states, though they had been anxious to get the salt lands, were, ere long, just as anxious to be rid of them. Numerous petitions were sent to Congress asking leave to sell. From time to time such leave was given, usually with some restrictions as to the amount to be sold, the price per acre, or the purpose to which the funds could be applied. It was not till after the middle of the century that the last restrictions upon the sale of salt lands by the states[1] were removed.

A more important and more interesting part of our subject is the management of the lead lands. These lands were situated in two widely separated districts in the Mississippi Valley, one in Missouri south of the river of that name, the other between the Wisconsin and the Rock rivers in the present states of Illinois and Wisconsin.

The lead mines of Missouri were discovered by the early Spanish explorers in their search for gold during the sixteenth century; but no attempt was made to develop them till 1712 when Louis XIV. granted to his councillor of state, Anthony Crozat, exclusive commercial privileges in the whole of the territory claimed by the French. To him was given full control of all mines he might discover, but with a reservation to the crown of one-fifth of the gold and silver, and one-tenth of all other minerals produced. Little was done by Crozat, and at the end of five years all his rights reverted to the crown.

It was just at this time that John Law's Mississippi scheme was gaining favor in France, and the supposed vast mineral wealth of this region became the basis of the speculations which characterized that movement. The Company of the West was the agent through which the wealth of the Mississippi region was to be realized. To this company was granted for twenty-five years, powers even more exclusive than those given to Crozat. The company was given the right to sell lands, and any occupied

[1] United States saline lands are still reserved from sale to be offered at public auction. The minimum price is $1.25 per acre. If not taken at auction, they may be sold at private sale at $1.25.—*Revised Statutes*, 2d ed., 1874–1891, p. 127.

or improved at the end of the twenty-five years were to be retained by the holders in fee simple. Within this company another was organized—the Company of St. Philips—to carry on mining operations. Law was the nominal head of this company, but its real executive head was the practical, energetic Philip Renault. In 1718 Renault came over with 200 artisans. With these and 500 slaves brought from Santo Domingo he began anew the quest for gold and silver. Disappointed in this, he turned his attention to the mining and smelting of the lead which he found in abundance in what is now Missouri and sent the product to France. Long after the "Mississippi bubble" had burst, Renault continued his operations upon lands granted by the French government. In 1742 he returned to his native land, and for fifty years little was done at the mines. But in the closing years of the century work was renewed under grants or permits of the Spanish authorities. When the United States acquired the territory in 1803, the annual product was estimated at 700,000 pounds.[1]

In 1807 the President was authorized to lease the lead lands in Missouri and the Indiana territory for periods not exceeding five years. Under this authority the government managed the mines for the next forty years. For the first fifteen years of this period the direct control of the lead mines was in the hands of the Treasury Department, and a very lax control it was. Some eighteen leases were executed during the time in Illinois and Missouri.[2] There was no attempt at uniformity in the terms of the leases. They were executed by a register of the Land Office, or by the territorial governor for periods varying from one to five years. The rental was generally a percentage of the product, ranging from 10 to 26 per cent., but often it was a money payment of from three to five dollars per thousand pounds of mineral raised.

The returns during this period hardly met the expectations

[1] On this early history, see H. R. SCHOOLCRAFT'S *A View of the Lead Mines in Missouri*, New York, 1819. SIDNEY BREESE, *Early History of Illinois*, Chicago, 1884, pp. 157–168 and 276. *Letters Patent to Crozat*, 1712.

[2] *Public Lands*, vol. iv. p. 526.

raised by the reports of the mineral wealth of the Southwest The total revenue yielded to the government for the fifteen years was only about $2000.[1] Yet the insignificance of this rental was not due so much to a deficient product, as to the lack of control over what was produced; for the product was in the latter part of the period estimated at 4,000,000 pounds a year.

This condition of affairs had been brought about in two ways. In the first place, no decisive action had been taken to settle the numerous claims which had arisen under the old French and Spanish grants and so long as the question was pending, the *bona fide* claimants felt justified, as indeed they were, in continuing to work the mines; and along with these valid claims, perfectly groundless ones were set up as a pretext for entering upon government lands. In the second place, the method of reserving the lands was defective. The whole matter was left with the surveyor-general who was directed to designate such lands as he found to contain minerals. But his work carried him only along the section lines and much land containing lead was returned as agricultural land and sold. Private ownership thus gained a firm footing in the region. In the confusion which resulted from this mixed ownership and from disputed claims, a considerable body of trespassers without a shadow of right to mine, preyed upon all alike. Even the lessees were not secure from their depredations, and receiving no protection from the government were often driven to abandon their leases.[2] Such conditions were not favorable to producing a large revenue.

The Treasury Department not having sufficient force to care properly for the mines, the mineral lands were, at the suggestion of Secretary Crawford, transferred to the War Department in 1821, where they remained till thrown open to purchase in 1847. Steps were immediately taken to reorganize the management. A new plan of leasing was devised; an ordnance officer was detailed to superintend the lead mines; and the hope was confidently

[1] *Public Lands*, vol. iii. p. 712.

[2] *Senate Document* No. 45, XIX. Congress, First Session.

expressed that the mines would become a considerable source of revenue to the government.

The new leases were made uniformly for three years and the rent was fixed at 10 per cent. of the lead produced. The amount of land for each lease varied, but it never exceeded 320 acres. Sub-leases were not allowed. The lessees were required to keep open for official inspection, a book showing their operations. A bond of $5000 was required; and to insure an extensive working of the mines the lessee was bound to employ a certain number of men for a stated portion of the year.

The very energy with which the administration of the mines was being attempted, created hostility to the government, especially in Missouri, where the existence of a mixed ownership produced trouble not experienced elsewhere. The attempt to collect rents from men who had never before paid any, was enough in itself to produce great friction; but the difficulties were increased by the position assumed by Thomas H. Benton in the Senate. The next year after the new plan was adopted, he began an attack on the whole system of reservation and leasing, basing his objections on historical, financial, constitutional, and moral grounds; and each year the attack was renewed, till in 1829 an act was passed throwing the lands in Missouri open to purchase. A vexatious question was thus disposed of; but some rent continued to be collected in the state till 1831. For the ten years, 1821–1831, 423,000 pounds of lead, worth about 4½ cents per pound, were received and deposited at the St. Louis Arsenal. The expenses for the period were $14,000, leaving a balance of $5000 for the ten years.[1]

More satisfactory were the operations on the Upper Mississippi. The existence of lead in this region was known very early, and toward the end of the century some mining was done at Dubuque on the west side of the river. During Jefferson's administration an attempt was made to secure these lands from the Indians, and indeed a treaty was made in 1804, by which the Sacs and Foxes ceded the desired territory. But it was soon found that other

[1] *Public Lands*, vol. viii. p. 450.

tribes had claims upon it, and it was not till 1816 that the right to enter upon the lands was secured. In that year the government acquired the right to a tract fifteen miles square in this disputed territory, to be chosen by the President. The tracts chosen contained most of the lead lands, and work was begun upon them about the time the War Department assumed control.

In this region, with all the mines under the control of the government, and with a body of tenants who had not grown old in working the lands of the United States without paying rent, it was found quite easy to put the system in operation. From the first, rents were paid promptly and in full. The rich deposits about Galena attracted a large tenantry, and the industry was soon far more important than that of Missouri. The tariff act of 1824 doubled the duty on lead; prices advanced from 4 cents to 6¼ cents per pound; and under the stimulus thus given the production increased enormously. For the years 1822–1824 the average product was 175,000 pounds; by 1829 it had risen to 13,000,000 pounds. The growth of the industry had been too rapid, and the miners found themselves with more lead on hand than they could dispose of at paying prices. Relief was asked for, and granted in 1829 through a reduction of rent from 10 per cent. to 6 per cent. What effect this reduction had on the condition of the miners, or how it affected production cannot fully be made out. The returns for 1830 show a product of only 8.3 million pounds, and in 1831 of only 6.3 millions. But the returns are stated to be incomplete owing to the "delinquencies of the lessees." The figures do not, therefore, indicate the true production. The delinquencies complained of continued till 1835, when the lessees broke out in open revolt against the system, and no rents were collected, and no returns of any kind made. It is the causes for this revolt which we are now to study.

It will be remembered that the authority to lease the lands was given by an act of 1807. The act provided that "The President of the United States shall be and is hereby authorized to lease any lead mine which has been, or may hereafter be, discovered in the Indiana Territory, for a term not exceeding five

years." Under the Treasury Department, no special officers had been appointed to look after the mines. The work was done as an additional service by the register or by the territorial governor. The reason for the transfer of the mineral lands to the War Office was that some of the ordnance officers already in the vicinity might look after the leasing and the collection of rents; and for a time this was done without additional expense. But as more and more time was required to attend to the business, the necessity of having an officer on the ground increased, and in 1824 a superintendent of lead mines was appointed. As necessity required, assistants and other agents were appointed to aid him, and thus there grew up a body of officials unknown to the law, and therefore, in the view of Benton and others, without authority to act.

Moreover, the leases first granted were to miners alone, who, it was expected, would smelt their own ore and make their return directly to the government. But, as the number of lessees increased, and the wastefulness of numerous small furnaces was seen, the government began, about 1825, to license smelters who should receive the ore from the miners and make deductions for the payment of rent to the government. For the faithful performance of this service they were required to give bond for $10,000. Here was another class of persons created without any warrant of law, and the question was early raised as to whether the smelters were legally bound to make any returns to the government. Indeed, the constitutionality of any kind of reservation or lease continued to be questioned.[1] The natural depression in the business which followed upon the over-production of 1828–29 produced discontent among the miners, and that discontent was increased by the abandonment of public ownership in Missouri; so that it was little wonder that "delinquencies" became frequent in Illinois. In vain the state legislature had memorialized Congress to sell the lands. The natural result was produced. That conflict between state and nation which, for ten

[1] See the Messages of the Governor of Illinois about this time; EDWARDS *History of Illinois*, pp. 105 *et seq.*; BENTON'S *Abridgment*, vol. ix. pp. 280–282.

years, Benton had been predicting and, perhaps, helping on, seemed to be at hand, when in 1830, the governor of Illinois advised the smelters to cease paying rent and to resist its collection.[1] Many continued to pay their rent, but only a pretext was required, in this condition of affairs, to bring the whole region into open revolt against the leasing system.

That pretext was furnished by the passage of an act in 1834, establishing a land office at Mineral Point, Wisconsin, and by the issuing of a proclamation by the President, declaring certain lands in the mineral region open to purchase. Although the proclamation specifically reserved from sale all land containing minerals, the miners and smelters construed the law as a repeal of the act of 1807 and as leaving the government without any form of authority for collecting rents.[2] Some ground was given, too, for this construction by the action of the officials. As soon as the land office was open, sales were made which seemed to indicate that reservations were at an end. Some tracts well known to contain lead were sold — some, in fact, which were being worked. The Department had established as a rule for ascertaining the character of lands before entry that the applicant should declare on oath that he had examined the tract applied for and had found no evidence of mineral deposits. He had also to produce a witness to testify to the same effect. This was considered sufficient guarantee against fraud. But as it afterwards turned out, it was the practice for applicants and their witnesses to be led blindfolded over the tract applied for, and then swear at the land office that they had seen no indication of minerals.[3] The register participated in the frauds by neglecting to require the oath, and by conniving with favored purchasers to withhold from auction lands known to contain lead, allowing them afterward to be entered as agricultural lands. The register himself secured a valuable tract in this way. The surveyor-general of Wisconsin secured another.[4]

[1] *Senate Document* No. 93, XXV. Congress, Second Session.

[2] *Senate Document* No. 205, XXVII. Congress, Second Session.

[3] *House Executive Document* No. 153, XXVII. Congress, Third Session, p. 3.

[4] *House Executive Document* No. 277, XXVII. Congress, Second Session.

Even tracts covered by leases and by permits[1] to dig ore were not safe from these fraudulent entries. As it was the practice of the territorial courts to accept the certificate of the register as sufficient evidence of sale, the lessees had no power to protect themselves from ejectment. Even when fraud was perfectly clear, no defense of prior claim could be set up. Proceedings for perjury were summarily dismissed by the courts on the ground that the register had no power to administer oaths and that therefore the offense did not constitute perjury.

It is little wonder, then, that the whole leasing system broke down; even those whose holdings were not sold had no assurance that they would not soon be, and all alike refused to report their ore to the smelters as coming from United States land, while the smelters refused, in turn, to make any payment to the government. By the middle of 1835, not a pound of lead was being received as rent.

For the next six years the control of the government over the mines was only nominal. Suits were brought, in 1836, against several smelters, but the cases, turning upon the constitutionality of the law of 1807, and upon the authority of the President to license smelters under it, were carried up to the Supreme Court and were not decided till 1840. The decision sustained the law and the authority to grant licenses to smelters.[2] But so habitual had become the disregard for United States officials that it was found extremely difficult to restore control over the miners. The Secretary of War, knowing what the difficulties would be, adopted the recommendation made for ten years past by the Chief of Ordnance, and urged that the lands should be sold. But Congress did not act and nothing was left for the Secretary to do but to bolster up the system as best he could.[3]

[1] After the granting of smelters' licenses came in, "permits to dig ore" were often granted without the formality of a lease, the holder of the permit being required to deposit his ore with a licensed smelter who deducted the rent.

[2] United States *vs.* Gratiot, 14 Peters 534.

[3] The superintendent was instructed to collect arrearages of rent "by compromise, arbitration, or otherwise," but he was not allowed to involve the government in further expense. His own salary was to be derived in part from a percentage of his collec-

A new form of lease was adopted in 1841, granting much smaller tracts than before and requiring the miners to pay rent directly to the government. The term was only one year. During the next three or four years a considerable number of leases were made, but nothing like the whole of the lands was covered by them, nor did those properly leased yield the rent they should have produced. For 1842 some 30,000 pounds were received. The amount rose to 178,000 pounds the next year, but, in spite of a large increase in the number of leases, fell in 1844 to 17,000 pounds. Even in 1843 only a fraction of the government's share was received. Those who had taken out leases withheld the rental, as they said, to pay the expense of suits in which they were frequently involved with preëmptors;[1] and since the government did not take the trouble to protect them, there seems to have been some justification for their attitude. Those working government lands without leases tried to justify themselves on the ground that the law of 1834, establishing the land office at Mineral Point, had repealed the act of 1807, and that therefore there was no authority for leasing the land. A decision on this point was reached in 1844.[2] It was declared that the act of 1807 was still in force and that digging ore on the public lands was such a waste as entitled the United States to an injunction for restraint.

The new Secretary of War, in 1845, made a strong effort to regain control of the mines. The rigorous policy he laid down for the superintendent could not be carried out, however, owing to the hostility it aroused throughout the lead region. Some leases were made, and some rent was collected; but not enough

tions and he was allowed to engage counsel to be paid in the same way. But some of the delinquents had died, some had moved into other states, and still others were bankrupt. Even where solvent debtors could be found, there was no hope of getting a jury within the region that would give a verdict against them. The amount of arrears of rent collected was therefore insignificant.

[1] When purchasers were successful in establishing their claim, they were often able to secure from the miners a fourth or even a third of the mineral raised. It seems there ought to have been little complaint of the government's moderate rental of 6 per cent.

[2] United States *vs.* Gear, 3 Howard 120.

to pay the expenses incurred.[1] The secretary and the President urged Congress to dispose of the lands, and in July, 1846, much to the relief of all concerned, an act was passed throwing the lands open to purchase. All the lead lands in Wisconsin, Iowa and Illinois were to be advertised for sale at auction for six months at a minimum price of $2.50, double the price of agricultural lands, and were then to be subject for a year to private entry at $2.50. Thereafter those remaining were to be sold as other lands.

From a financial point of view the experiment of leasing the lead mines had not been a success. From 1821 to 1830 they had been a source of considerable revenue. From 1830 to 1835 the rents decreased, and in the middle of the latter year they ceased altogether. In 1842 they again became a source of revenue, but not sufficient to pay the expense of collection. For the whole period, the most liberal estimate made shows a net revenue of only $86,400, or an average annual income of $3,300.[2] If the cost of surveys and of litigation were added to the expense column, and if the damage done to the public lands through wasteful mining and the use of timber, many tracts of which were entirely stripped, were taken account of, this small surplus would be turned into a very considerable deficit.

From a political point of view the experiment was equally unfortunate. The states chafed under a policy which looked to establishing, within their jurisdiction, a permanent tenantry "owing allegiance to a foreign government," and hostility was constantly engendered by it.[3] Nor is it to be wondered at. In

[1] And this at a time when the average product for the region was 44 million pounds per year, and worth 2.64 cents per pound. In 1845 the output was 54 million pounds.—HUNT, vol. xxx. p. 375.

[2] Estimate of Colonel Talcott, of the Ordnance Bureau.—*Ordnance Bureau Report*, 1846 and 1847.

[3] The part played by the public lands in the ever present "constitutional" controversy from the very beginning of the republic is set forth by JAMES C. WELLING in his essay on the "States-rights Conflict over the Public Lands." (*American Historical Association* Papers, vol. iii., pp. 167–183.) The right of the government to retain lands within the borders of a state after its admission was long vociferously denied even when no question of the leasing of lands was involved. The constitutional argument is given in Governor Edward's Message to the Illinois Legislature, December, 1830.

Jo Daviess county, Illinois, with a population of 16,000 in 1846, there was not a single freehold except in some town lots in the village of Galena. Whatever had been the motive for reserving the lead lands, whether simply to gain information about them in order to secure a higher price, to prevent monopoly, or to make them a source of revenue, all reasons for retaining them seem to have passed away long before the act of 1846 threw them open to private ownership.

But the leasing of mineral lands was not yet entirely abandoned. Just when the government was attempting to reassert its authority in the lead regions, the copper lands in the Superior district began to attract prospectors and speculators. In 1842 a treaty was made with the Indians which gave the United States control of the copper mines. The Secretary of War asked for a law directing him what to do with them. Congress remaining silent on the subject, however, the secretary, with some doubts as to the legality of his acts, began to issue permits to such persons as applied for them, "to examine and dig for lead and other ores" on the Chippeway tract, falling back upon the lease law of 1807 for his authority. Those holding such permits were to be allowed to take out leases as soon as the lands were surveyed. Departing from the policy of granting small holdings, the secretary allowed tracts three miles square to be located, and one person might locate three such tracts. Forty-five leases were taken for the three-mile tracts, but the size of holding was soon reduced to one square mile. The leases were to run three years, and were renewable for two like periods unless Congress should otherwise dispose of the lands. For three or four years the copper fever ran high. So quickly did the rush for the mines follow upon the government's acquisition of them, that the lands could not be properly surveyed fast enough to meet the demand for them. Leases were made for the same tracts several times over, and soon the government found itself involved in what, after half a century of experience, still remained the mysteries of mineral land management.[1]

[1] See *Senate Executive Document* No. 160, XXIX. Congress, First Session.

It was not till March, 1847, however, that Congress took what seemed the easiest way out of the difficulty, and passed a law throwing the copper lands open to purchase. But the terms of purchase were so unfavorable that many lessees found it more profitable to pay the rent they had agreed upon. Rent continued to be received till 1852. Aside from the expense of surveying, the government paid out some $5000 more than it received from 1847 to 1852, and for the whole period from 1842 to 1852 the loss was considerably in excess of that amount.[1]

Before the government had yet shaken off the system of mineral land leases, the gold discoveries in California were made, and the question arose as to how the lands should be managed. In his report for 1849, Secretary Ewing, of the newly organized Interior Department, to which the land office had been transferred, pointed out the necessity of immediate action if the government wished to protect its property from depredation by the thousands of all nations who were flocking thither. Spain and Mexico had retained a share in all the precious metals found on lands granted by them, and the United States had acquired the same rights. Two courses were open for the disposal of lands belonging to government, that of leasing and that of sale. The secretary favored the leasing plan for surface deposits which could be worked with little capital, since a monopoly of them would thus be prevented. Where deep mining and much machinery were necessary, he favored the sale of the lands, but still retaining to the government a share of the metals produced from them.

During the extra session of 1850, Senator Fremont of California brought in a bill for the management of the gold lands, which provided merely for laying out mining lots of given dimensions, and for charging a nominal fee for the right to mine upon them. Mr. Ewing, now in the Senate, was not willing to give up the plan of making the gold deposits a source of revenue to the government, and proposed that all miners be required to sell their product to the United States at $16 per ounce, the

[1] *Ordnance Bureau Report*, 1846, and *Land Office Reports*, 1848–1852.

market price of gold at that time at San Francisco. Between that price and the coinage value a good profit could be realized by the government. Mr. Benton reviewed the experience of the United States in mercantile undertakings and after some discussion Mr. Ewing's substitute was rejected and the bill passed the Senate in the last days of the session substantially in the form in which it had been introduced. By December, however, President Fillmore, the Secretary of the Interior, and the Commissioner of the General Land Office, having the experience with the lead and copper mines clearly in mind,[1] agreed in recommending the unqualified sale of the land. As a result of these recommendations, the bill failed to pass the House. Congress made no provision for the sale, lease, or regulation of the lands. It contented itself with merely reserving them from grants made under the preëmption, homestead, and other acts, till 1866 when the first law concerning them was passed. During all this time the mining communities had been governed by regulations which they themselves had adopted — rules which rested entirely upon the consent of the miners, but which came to be recognized by the courts in settling disputes, and were finally enacted into laws by the state and territorial legislatures.[2] The act of 1866 which rather tardily declared the mineral lands

[1] The President said in his annual message: "I was at first inclined to favor the system of leasing as it seemed to promise the largest revenue to the government and to afford the best security against monopolies; but further reflection and our experience in leasing the lead lands . . . . have brought my mind to the conclusion that there would be great difficulties in collecting the rents. . . . I therefore recommend that instead of retaining the mineral lands under permanent control of government, they be divided into small parcels and sold under such restrictions as to quantity and time, as will ensure the best price and guard most effectually against combinations of capitalists to obtain monopolies." The secretary and the commissioner described in the most vigorous language the "odious system of leasing" whereby the government as a "rich landed monopolist" had reduced the miners to a condition of "vassalage." This had produced ill feeling among the miners and led finally to resistance to the laws on their part while it had roused, not without reason, the jealousy of the states. They saw no reason why the experience in Missouri and Illinois might not be repeated in California.

[2] ELIOT LORD, *Comstock Mining and Mines*, chap. iii.; *Monographs of the United States Geological Survey*, 1883, vol. iv.; DONALDSON, *Public Domain*, p. 321.

of the public domain "to be free and open to exploration and occupation," also adopted these local rules so far as they did not conflict with the laws of the United States. The act further provided that occupants of mining claims might receive patents therefor when it could be shown that not less than $1000 had been expended upon them in labor and improvements This provision applied only to lodes and veins. The price set was $5 per acre and the expense of surveying, the price which still is paid for such lands.[1] The act without disturbing claims already laid out made some provision for the manner of laying out future claims. An act of 1870 gave authority for the sale of the placer lands, at the rate of $2.50 per acre, and prescribed the manner of laying out such claims. Two years later a more adequate law was passed for the regulation of mining on the public lands, retaining very much the same provisions for selling the lands.

The management of the coal lands has furnished no such experience as the lead and copper lands have. They have been treated in a class by themselves and may be spoken of briefly. One of the exemptions in the preëmption act of 1841, was of "all lands on which are situated any known salines or mines." Under this provision coal lands were exempted from sale until 1864 when the President was authorized to offer them at public auction after three months' notice, at a minimum price of $20 per acre. If not thus disposed of they were then made liable to private entry at the same price. A law of 1873 made all coal lands liable to private entry, in tracts not exceeding 160 acres for one person, or 640 acres for any association. The price was fixed according to the distance from a railroad, being $10 per acre if more than fifteen miles from a completed railroad and $20 if less than that distance. It is under this law that coal lands are still sold

The manner in which the mineral lands have been administered after being made subject to entry, is not, however, to be

[1] There seemed to be very little inducement to purchase these lands. Occupiers were not required to buy and the expense of survey kept many from becoming owners. From 1866 to 1880 only 5281 patents for all classes of gold lands were issued, covering 148,600 acres, and yielding to the government $486,500.— DONALDSON, *Public Domain*, p. 328.

dealt with in this paper, nor is the question as to whether mining is a suitable field for government activity to engage our attention at this time. It was intended only to call attention to a neglected chapter of our public land history, to indicate the causes of the government's failure as a mine-owner, and to show the bearing of that failure upon the policy afterward pursued with regard to the gold lands. Undoubtedly the mining business has peculiarities which would severely test the efficiency of a government undertaking to control it in any but the most general way. But it was not the difficulties arising from these peculiarities which contributed most to the downfall of the leasing system. The failure was, in part, due to the newness of the industry and the inability of the government to adapt itself to new conditions as they arose. But by far the greatest element of weakness was political rather than economic. That inordinate haste to get the most in the least time even at the cost of intolerable waste, which has characterized our whole economic development, showed itself in mining, and the government was unable to check it, and was little disposed to attempt to do so. Indeed, it was forced to aid the unhealthy development in various ways. But aside from the political pressure used for this purpose, the inability of the government efficiently to control an industry "within a sovereign state" was largely due to the political theories prevalent at the time; and to these theories and the disregard for national authority which naturally grew out of them can be traced the principal cause of the failure of the leasing system.

G. O. VIRTUE.

HARVARD UNIVERSITY.